IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. .....

THE BALTIMORE TRANSIT COMPANY AND THE BALTIMORE COACH COMPANY,

Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The aforegoing petition for a writ of certiorari sufficiently sets forth references to the opinion of the Court below and the findings and order of the Board; the grounds upon which jurisdiction is invoked; the statutes involved; a concise statement of the case, and the questions presented. The questions involved are discussed herein in the order in which they appear in the petition.

ARGUMENT

I.

THE NATIONAL LABOR RELATIONS ACT DOES NOT APPLY TO PETITIONERS. (Questions Nos. 1, 2, 3 and 4.)

Petitioners, at the time of the hearing before the Board's trial examiner, operated daily a total of 1,253 vehicles, including street cars, trackless trolleys and buses (R. I, 162). Competition in the business of public transportation of passengers for hire was provided by nearly 1,000 taxicabs (R. I, 182), by 8 gasoline buses operating on the Fayette Street line in Baltimore (R. I, 157), and by a few other bus lines operating between points in the city and outlying sections (R. I, 183). Petitioners, as in the case of competitive taxicab and bus services, are under the jurisdiction of the Public Service Commission of Maryland, and all rates and character of service are subject to its supervision and approval. Petitioners are not part of or in any way connected or integrated with any power company or other industry engaged in interstate commerce, and to that extent their operations are immediately and completely distinguished from the street railway public passenger services considered by this Court in *N. L. R. B. v. Virginia Electric and Power Company*, 314 U. S. 469, which services were operated as a unit or division of a power company engaged in interstate commerce, and where there was one union of employees of all divisions thereof.

The Board has not attempted to exercise jurisdiction over petitioners' competitors, as is evidenced by its adherence to its ruling that it has no jurisdiction over and that the Act does not apply to local public passenger transportation services such as taxicabs. *Yellow Cab and Bag-*

gage Company, 17 N. L. R. B. 469. And, as stated in the petition, until the order in this case was entered by the Board on February 1, 1943 (R. I, 1), it had construed the Act as inapplicable to petitioners who are engaged exclusively in the business of wholly intrastate public transportation of passengers for hire. In making its first ruling that the Act did not apply to petitioners, (Regional Director, September 29, 1937, R. II, 801, 1219; and, on appeal, the Board, April 29, 1938, R. II, 1220) the Board had before it this Court's decision in *N. L. R. B. v. Jones & Laughlin*, 301 U. S. 1, decided April 12, 1937. The Board, presumably, was guided by the definitions and limitations set forth in this Court's opinion therein, and gave effect to the statement that the Act may not be construed so as to give the Federal government supervision over the internal concerns of a State. In this case, however, the Board has departed from the area of jurisdiction defined by this Court, and is attempting to extend its authority over operations which do not affect interstate commerce in a "close and intimate" fashion, which do not bear a substantial relationship thereto, and the effects of which thereon are so indirect and remote that the assumption of federal authority obliterates the distinction between what is national and what is local, and creates a completely centralized government. There is no escape from this.

The Board's jurisdiction over petitioners is rested by the trial examiner on several grounds (R. I, 32), all of which are adopted by the Board by reference (R. I, 2), although the principal emphasis in the Board's decision, and in the opinion of the Court below is upon only one of said grounds and a number thereof are not mentioned in the lower Court's opinion. These several grounds will now be considered.

Transportation of Workers To and From Industrial Plants

The primary basis for federal jurisdiction advanced by the Board is that "among the passengers carried on respondents' (petitioners') transportation system are substantial numbers of employees going to and from their work in industrial plants in and around Baltimore". However, petitioners do not know the destination of any of their passengers, or the business in which they may be engaged. Petitioners do not have contractual obligations with industrial plants to transport passengers to or from them. The choice of their means of transportation is made by the workers and not by the owners of the plants. Workers may use petitioners' system, other bus lines, taxicabs, hired automobiles, their own or their neighbors' cars, or they may walk. It is just as incorrect to say that industrial plants or other enterprises engaged in interstate commerce are dependent, in any legal sense, upon the transportation facilities of petitioners as it would be to say that such industrial plants are dependent upon the ice, milk and coal companies, the bakeries and groceries, and the doctors and dentists, who provide the workers with supplies or services without which they may not appear for work on time or at all. The principles applied in *McLeod v. Threlkeld*, 319 U. S. 491 (1943), under the Fair Labor Standards Act, 29 U. S. C. A. 201-219, are pertinent, as is *Pennsylvania R. R. Co. v. Knight*, 192 U. S. 21. Upon the facts of this case the Act cannot be applied to petitioners under the decisions of this Court in *Schechter v. United States*, 295 U. S. 495, and *Carter v. Carter Coal Co.*, 298 U. S. 238. The cases relied upon by the Board, *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197; *N. L. R. B. v. Bank of America Nat. Trust & Savings Assn.*, 130 F. (2d) 624; *N. L. R. B. v. Bradford Dyeing Assn.*, 310 U. S. 318;

Santa Cruz Fruit Packing Co. v. N. L. R. B., 303 U. S. 453; *Newport News Shipbuilding & Dry Dock Co. v. N. L. R. B.*, 101 F. (2d) 841, 308 U. S. 241; *N. L. R. B. v. Hudson Co.*, 135 F. (2d) 380; and *Butler Bros. v. N. L. R. B.*, 134 F. (2d) 981, are not in point, because the employers therein involved were engaged in interstate commerce, or were in the stream of commerce, as part of the outward or inward flow thereof preceding or subsequent to manufacture or sale. *Kirschbaum v. Walling*, 316 U. S. 517, is not applicable because there the services and facilities involved were necessary in the production of goods for commerce, and were contracted for and relied on by industries engaged in interstate commerce. Nor is *Wickard v. Filburn*, 317 U. S. 111, applicable. In that case the farmer who raises wheat for local consumption was declared to affect, and even to be part of the national economy, but petitioners' wholly local transportation system does not compete with or form any part of interstate transportation or any other interstate activity, and in no way affects the national economy. The decision in this case not only reverses prior administrative construction with respect to transportation and other local services and operations, it also nullifies all contemporaneous legislative construction in the passage by the States of New York, Pennsylvania, Massachusetts, Wisconsin, Utah, Rhode Island, Minnesota and Michigan of state labor relations acts, all of which will become useless for all practical purposes unless the decision herein is reversed.

Purchase of Materials "Originating" Outside the State

It was found that petitioners purchased gas and oil in Baltimore, from local dealers, and that such gas and oil originated at some time outside the State. The lower

Courts' theory that such purchases affect interstate commerce within the meaning of the Act is an unwarranted attempt to extend principles approved in the decisions of this Court as determinative of the jurisdiction of the Board, beginning with *N. L. R. B. v. Jones & Laughlin*, 301 U. S. 1. And the suggestion that an article retains its interstate character after the journey into a State is over, and after it has passed through one or more hands, so that purchases from importer, jobber, wholesaler, retailer, and so on to the ultimate consumer are transactions in or affecting interstate commerce is in direct conflict with all adjudicated cases to date. *Schechter v. United States*, 295 U. S. 495. *Walling v. Goldblatt*, 128 F. (2d) 778, cert. denied, 318 U. S. 757. *Schroepfer v. Abell Co.*, 138 F. (2d) 111, cert. denied, January 17, 1944. Since there are few things used by individuals which do not "originate" in whole or in part outside of the State in which they reside, it would seem that the idea advanced by the Board and approved by the lower Court would carry the federal power over every conceivable commercial activity, and terminate the last vestiges of State authority. This is true because practically every individual in his every day activities uses articles, all or part of which originated outside of the State wherein he resides, and he could not function in any capacity without being subject, directly or indirectly, to such regulations as Congress might choose to impose. The Board and lower Court found that petitioners' activities affected commerce because they purchased in 1940 and 1941 street cars, buses, trolley coaches and other equipment and materials from points outside the State (R. I, 37, 154, 155). The amount and character of these purchases vary greatly from year to year. Since they are used and consumed by petitioners in their own business, there is no flow of commerce preceding manufacture or sale, and there is no evidence what-

ever in the record that industrial strife on petitioners' system could or would result in substantial interruption to or interference with such purchases.

Services Allegedly Connecting With Interstate Carriers

The finding that petitioners' services connect with interstate carriers (R. I, 37), has no factual basis whatever. On the contrary, the record clearly shows that petitioners' operations are in no way integrated with nor do they maintain connecting schedules with such carriers (R. III, 11, 12). Petitioners' operations, considered with respect to the operations of such carriers, are separate and wholly local and being so are analogous to the situation before this Court in *Pennsylvania R. R. Co. v. Knight*, 192 U. S. 21.

Abandonment in 1935 of Charter Service

Another ground is labeled "the abortive attempt to evade federal jurisdiction by the discontinuance of the interstate bus service." (R. I, 38). There is no basis for this finding, and it was not mentioned by the lower Court. Prior to 1935 (not 1937, as erroneously stated by the trial examiner) the predecessor company occasionally chartered buses for trips out of the State. The business was small and unprofitable and was abandoned at the time that the company was reorganized, almost nine years ago (R. I, 553).

Transportation of Mail

Petitioners carry a small number of sealed pouches of mail from the local Post Office to points in the city and vicinity, (R. I, 194), and do so, not as a part of its business, but solely under compulsion of the Act of Congress of July, 1918, Title 39, Section 571. *N. L.*

R. B. v. Idaho-Maryland Mines Corp., 98 F. (2d) 129. This is only incidental, and the total gross revenue for the mail service during 1941 was $1,100, or .0000743 per cent. of petitioners' total operating revenues.

Transportation of Newspapers

The record discloses without dispute that petitioners' activities in transporting newspapers are limited to the transportation of newspapers printed in the City of Baltimore and carried within its limits for local distribution, (R. I, 194), a situation which could not possibly bring the activities of petitioners within the application of the Act. Any idea that the local transportation of newspapers is or affects interstate commerce seems to be answered by the lower Court's opinion in *Schroepfer v. Abell Co.*, 138 F. (2d) 111, cert. denied, January 17, 1944.

Display of Advertising

Advertising is displayed in petitioners' vehicles, but the record discloses that petitioners do not solicit or sell advertising. They sell space for advertising in their vehicles to one concern, Transitads, Inc., and much of the space is used for advertising local products and events (R. III, 252, 253). The lower Court made no mention of advertisements.

Purchase of Electric Energy

The record shows that all of the electricity used by petitioners is purchased within the State of Maryland. Petitioners buy all of their electric power from the Consolidated Gas, Electric Light and Power Co. of Baltimore. In 1941 petitioners bought about 138 million kilowatt hours. During the same year Consolidated produced about one billion, 390 million kilowatt hours at its generating plants in the City of Baltimore (R. III, 24, 25), so that petitioners'

purchases were less than one-tenth of the Consolidated's local production. During the same year Consolidated purchased in Maryland from other companies about 899 million kilowatt hours.

The record does not show that any outside energy reached petitioners, (R. I, 296). The Federal Power Commission stated that it was difficult to determine that fact (R. II, 861, 862), and no determination was made in this case. Therefore, there is no tangible foundation for the assumption, made by the Board and the lower Court, that some of the energy used by petitioners "originated" outside of the State, but, in any event, it is undisputed that all such energy, if it ever reached them, passed through several ownerships within the State prior to any assumed purchase by and delivery to petitioners. And such purchases were not in and do not affect interstate commerce. *Missouri, ex rel. Barrett v. Kansas Natural Gas Co.*, 265 U. S. 298; *Utah Power & Light Co. v. Pfost*, 286 U. S. 165.

We believe it is clear that none of the grounds advanced by the Board and the Court below for holding that the Act applies to petitioners, is, when considered alone, sound and tenable; and, of course, the aggregate thereof can have no different legal effect in this respect than can each of the points when considered separately. We, therefore, submit that there was no justifiable basis for the action by the Board and the lower Court in adding together these various aspects of petitioners' wholly intrastate activities and then finding, mainly because of the size of petitioners' business and its location in one of the larger cities of the country, that the operations affect interstate commerce in such a sense as to bring them within the Act.

II.

THE BOARD'S COMPLAINT AND ORDER ARE BARRED BY THE DOCTRINE OF ESTOPPEL

(Question No. 5.)

(a) res judicata

On August 6, 1937, the Transport Workers of America (C. I. O.) filed a charge against The Baltimore Transit Company, which owns and operates petitioners' mass transportation system, alleging unfair labor practices in violation of the Act, and specifically of Section 8 (1) and (3). The charge was filed with the Board's Regional Director for the fifth region (R. II, 799, 800). The Regional Director has full power and authority to investigate all charges filed with him, and no charge may be withdrawn without his or the Board's consent (Sec. 11 of the Act; Board's Rules and Regulations, Article II, Sec. 1-4, Article IV, Sec. 1). The Regional Director made a thorough investigation (R. II, 801), conferring with counsel for petitioners, and being given requested information concerning petitioners' activities (R. III, 453, 454). Petitioners contended that the Act did not apply and that the Board lacked jurisdiction. On September 29, 1937, the Regional Director notified petitioners he was "compelled to dismiss the charge for lack of jurisdiction" (R. II, 801). The Union was notified it had the right to file exceptions or to appeal from this ruling to the Board. The appeal was taken, and on April 29, 1938, the Board affirmed the Regional Director and notified the Union what had been done (R. II, 1220). Since the Union's charge was dismissed, the Board's order was final, and, therefore, was reviewable in the appropriate circuit court of appeals (Sec. 10 (f) of the Act). But no petition by any person aggrieved by the order was filed. The Board is the only tribunal with power to make an original determina-

tion as to whether it has jurisdiction and whether the Act applies, and until the Board makes that determination, there is no way in which the issue can be determined by the courts. This Court has held that the only adversary parties under the Act are the Board and the employer complained against. *Amalgamated Utilities Workers v. Consolidated Edison Co.*, 309 U. S. 261. The parties in this case are the same as they were in 1937 and 1938, when the Regional Director and the Board first decided the question of jurisdiction. The record shows there have been no changes in the character of petitioners' business since the Regional Director and the Board decided that the Act does not apply (Board Exhibits 13-17 inc.; par. 1, 2 and 3 of Complaint, R. II, 786, 787; purchases and revenues, R. I, 194, 252, 485-488). The principles of res judicata apply to questions of jurisdiction, *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 78, and the doctrine has been applied repeatedly against agencies of the United States. *Tait v. Western Maryland Ry. Co.*, 289 U. S. 620, 624; *Noble v. Union River Logging R. R. Co.*, 147 U. S. 165; *Lane v. Watts*, 234 U. S. 525; *Brougham v. Blanton Manufacturing Co.*, 243 Fed. 503. And a Circuit Court of Appeals permitted the Board to reopen a case only because in that case the order of dismissal contained an express reservation of the right to reinstate. *Conn, Ltd., v. N. L. R. B.*, 108 F. (2d) 390, 392. The Board's general and approved practice in other cases is to make reservations where it desires to retain the right to reconsider, and omit them where it desires to make its orders final and binding. *San Diego Ice and Cold Storage Co.*, 17 N. L. R. B. 422; *Yellow Cab and Baggage Co.*, 17 N. L. R. B. 469, where the orders were without prejudice to reconsider; *Cactus Mines Co.*, 21 N. L. R. B. 677, where reservation was omitted; *Protective Motor Service*, 8 N. L. R. B. 309, where the Board reserved the right to take further proceedings; same case, 21 N. L. R. B. 552, where the

Board dismissed the proceedings without any reservation. The courts have recognized this practice with respect to the Board. *Semet-Solvay Co. v. N. L. R. B.*, 100 F. (2d) 1020, where Board's decision was vacated and set aside with prejudice. There can be no dispute that if the Board made a mistake in this case in dealing with the issue of jurisdiction, the remedy was by petition for review, but none was filed. *Jackson v. Irving Trust Co.*, 311 U. S. 494. Here the tribunal clothed with power to make the decision made it without reservation, and the decision binds the United States as well as petitioners. *Sunshine Anthracite Coal Co. v. Atkins*, 310 U. S. 381, 403, 404. It is submitted that the Board has no power in this case to reverse its prior ruling that it lacks jurisdiction over petitioners.

(b) equitable estoppel

In any event, the Board is estopped from making any finding that the petitioners violated the Act during the period when its ruling that the Act did not apply was in effect, and from basing any order thereon against petitioners. The ruling made by the Regional Director and affirmed by the Board gave petitioners a complete exemption from compliance with the Act. They could not in good faith be held accountable for violations of the Act during the time when the determination that the Act did not apply to them remained in effect. And none of the acts of the petitioners during such period of time, although thereafter adjudged by the Board to be unfair labor practices, were unlawful if the Act did not apply to petitioners.

The Board's order of February 1, 1943, invalidates the written contracts between petitioners and the Independent Union executed in January, 1942; it imposes heavy monetary obligations on petitioners by requiring them to reinstate ten discharged employees, with seniority rights and

privileges, to reimburse nine of them for any loss of earnings, and to refund dues checked off from the pay of employees who were members of the Independent Union. Because of its prior contrary ruling, the Board does not order petitioners to make any reimbursement prior to June 2, 1942, the date when the complaint was filed. The Board does this on the ground that the filing of the complaint put the petitioners on notice that its prior determination was no longer in effect (R. I, 5), thus conceding that the prior ruling was effective, at least until June 2, 1942. There is no sound theory of law under which the Board or any other administrative agency may apply remedies retroactively over the period when the act giving jurisdiction was not in effect or did not apply. *Helvering v. Reynolds Tobacco Co.*, 306 U. S. 110. See also *U. S. v. Alabama R. R.*, 142 U. S. 615. The Board cannot now find that the Act prohibited petitioners from discharging certain of its employees during the period when the Act, according to the Board's ruling, did not apply to petitioners; and the Board cannot now reverse its earlier ruling and proceed to the detriment of petitioners as if the ruling had never been made. Such a procedure violates every principle of fair dealing. Moreover, such action is in no sense remedial or preventive in character. It is unmistakably punitive and, therefore, in excess of the Board's power to make. The Court below seems to have missed the point entirely when it held the Board may take action to undo the effect of unfair labor practices allowed to continue after the complaint was filed. The point is that all of the alleged unfair labor practices charged in the complaint occurred *prior* to the date of the complaint, and therefore during the period when the Act was held not to apply and there could be no unfair labor practices. Inasmuch as the Board's order is based on findings of unfair labor practices during the period when petitioners were actually held not

subject to the Act, the order disregards the principles of equitable estoppel, is essentially punitive, and should be set aside.

None of the cases cited by the Board and by the lower Court in its opinion is authority for the Board's order in this case. Certainly *Pennsylvania Water & Power Co. v. Federal Power Commission*, 123 F. (2d) 155, 162, cert. denied, 315 U. S. 806; *Federal Communications Com. v. Pottsville Broadcasting Co.*, 309 U. S. 134, 145; *Houghton v. Payne*, 194 U. S. 88, 100; and *Jacobsen v. N. L. R. B.*, 120 F. (2d) 96, are not. The *Houghton v. Payne* case made it clear that a change in the administrative construction of a statute could not be made retroactively. The principles approved in such cases as *Federal Trade Com. v. Paladam Co.*, 316 U. S. 149; *United States v. City and County of San Francisco*, 310 U. S. 16, 32; *Utah Power & Light Co. v. United States*, 243 U. S. 389, 409; *United States v. City of Greenville*, 118 F. (2d) 963, 966; and *American Surety Co. of New York v. United States*, 112 F. (2d) 903, 906, are not relevant here. These cases authorize the United States to proceed where there has been a change in the facts upon which earlier rulings were based; where the officials had previously acted without authority, or acted illegally, or attempted to authorize illegal acts.

The Board is authorized to make the jurisdictional determination; the jurisdictional facts on which the Board's order is based are the same now as they were when the prior contrary ruling was made. If the Board has jurisdiction over petitioners, it must exercise that jurisdiction *after* and not *before* the Act takes effect as to petitioners' and that date in this case would be February 1, 1943, when the Board reversed its prior ruling. The Board is estopped from finding violations before the date when under its rul-

ing the Act first became applicable to petitioners, assuming that petitioners are now subject to the Act, and assuming that the Board can reverse its prior contrary ruling.

III.

THE BOARD'S ORDER IS INVALID (Question No. 6.)

The Board's Order is invalid for the following reasons:

(a) The Board's order requires petitioners to reimburse its employees who were members of the Independent Union for checked off dues, although petitioners never had any closed shop or maintenance of membership agreement with the Union (Board's Exhibit No. 71). The by-laws of the Union contained provisions for employees who did choose to join within 60 days of employment (R. II, 894). A number of employees who did join chose to pay their dues directly to the Union by check or cash, and chose not to participate in the check-off (R. I, 244). There was no compulsion to join the Union, or to remain in the Union, and the record shows conclusively that its members were free to pay their dues in any manner they selected. The Board's order is contrary to twelve decisions by Circuit Courts of Appeals, set out in Note 2 of the petition herein, *ante*, page 12. The order for reimbursement approved in *Virginia Electric & Power Co. v. N. L. R. B.*, 319 U. S. 533, involved a contract establishing a closed shop. This Court said that the order for reimbursement was valid because of the facts in that particular case. The situation here is entirely different, and the Board is without authority to stretch that decision to cover the circumstances disclosed by the record here.

(b) The requirement in the Board's order that notices designating by name certain unions which employees are free to join or remain in as members has been held invalid

in many cases set forth in Note 3 of the petition herein, *ante*, page 12. There is no ruling to the contrary, and the Board and the Court below simply ignored the adjudications on this point.

(c) The order requires petitioners to reinstate with seniority and other privileges employees discharged prior to June 2, 1942, the date when the complaint was filed, although, as pointed out, the discharges occurred when the Board's ruling that the Act did not apply was in effect. Petitioners have been ordered to reimburse employees for loss of earnings and for checked off dues after June 2, 1942, although the Board's order reversing its prior ruling of lack of jurisdiction was not issued until February 1, 1943. The Board contends, with the lower Court's approval, that the issuance of the complaint gave petitioners notice that the prior ruling of lack of jurisdiction was no longer in effect. But this contention is not sound. The issuance of the complaint could not be determinative of jurisdiction. This Court has said that a complaint merely sets in motion the machinery of an inquiry. *N. L. R. B. v. Indiana and Michigan Electric Co.*, 318 U. S. 9.

(d) Detailed discussion of petitioners' contention that the findings by the Board of unfair labor practices are not based on substantial evidence would make this brief unduly lengthy. The findings of unfair labor practices were adopted by the Board by reference to the findings of the trial examiner, and a reading of his intermediate report shows that the results were obtained by accepting as true all of the testimony given on behalf of the Board, despite, in many instances, as the record discloses, the unreliable and uncorroborated nature of such testimony, and its inconsistency with other testimony given by the same witnesses on cross examination. Many of the findings are based on

unwarranted inference and pure speculation, and not on evidence. *N. L. R. B. v. Fansteel,* 306 U. S. 240.

(e) Petitioners did not receive a fair hearing. Important testimony was excluded, petitioners' witnesses were abused and insulted by the trial examiner and the Board's attorneys (see petitioners' exceptions Nos. 168 to 191, filed with the Board and included in the certified record in this case). Petitioners were denied due process of law, and the proceeding violates the principles approved in *Donnelly Garment Co. v. N. L. R. B.,* 123 F. (2d) 215; *Morgan v. United States,* 304 U. S. 1; *N. L. R. B. v. Indiana & Michigan Electric Co.,* 318 U. S. 9; *N. L. R. B. v. Washington Dehydrated Food Co.,* 118 F. (2d) 980, and other cases in which similar incidents were considered.

IV.

THE BOARD IS PROHIBITED BY CONGRESS FROM PROSECUTING THIS CASE (Question No. 7.)

Petitioners filed a motion in the lower Court to stay these proceedings because the Board was prohibited by an act of Congress, Title IV of Public Law 135 of the 78th Congress, approved July 12, 1943, cited as "National Labor Relations Board Appropriation Act, 1944", from prosecuting its petition for enforcement. This Act provides that no part of appropriated funds shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed. One of the primary objectives of the complaint in this case is to nullify the agreements between petitioners and the Independent Union; to prohibit any new agreements, and to disestablish the Independent Union as the bargaining agent for its members in the

making of contracts with petitioners. The motion and the affidavit supporting the motion (R. III, 493-519) show that the contracts involved in this case were executed on January 1, 1942, and January 18th, 1942. The complaint in this case was filed on June 2, 1942, (R. II, 786), and the charge on which the complaint was based was filed the preceding day, June 1, 1942, (R. II, 795). The contracts were in existence longer than three months without complaint being filed. Authority in such cases was withdrawn from the Board by Congress, and the Board was without power to prosecute its petition for enforcement in the lower Court. *Dickerson v. United States,* 310 U. S. 554. The disability is still in effect. The Board contended below that the phrase "without complaint being filed" should be construed so as to mean "without charge being filed," thus extending the application of the prohibition from complaints filed by the Board to include charges which may be filed by any person with the appropriate Regional Director. In view of the fact that the Board and its Regional Directors are not required to advise employers of such charges, the interpretation suggested by the Board would make it impossible for any employer subject to the Board's jurisdiction to know whether his contract was immune from or subject to attack. It would render the prohibitory act meaningless, and open the way to destroy the purpose for which it was passed. The Board has stayed or dismissed some proceedings, and has prosecuted others (R. III, 519). It was error by the lower Court to deny the motion and thus decline to give effect to this clear mandate from Congress.

CONCLUSION

It is submitted that the petition for a writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit should be granted.

Respectfully submitted,

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Dated: February 28, 1944.